

Consideration of recommended amendment of nonrule policy document, Information Bulletin #1; Administrative Cause No. 15-065A

NATURAL RESOURCES COMMISSION
Information Bulletin #1 (~~Third~~ **Fourth** Amendment)

SUBJECT: Establishment of Division of Hearings; Indexing of Final Adjudicative Agency Decisions; Transcript Fees

ESTABLISHMENT OF THE DIVISION OF HEARINGS

The Department of Natural Resources (the "DNR") is among state agencies that are governed by IC 4-21.5 (sometimes called the "administrative orders and procedures act" or "AOPA"). The Natural Resources Commission (the "Commission"), through its AOPA Committee or one of its administrative law judges, serves as the "ultimate authority" for DNR under AOPA. IC 14-10-2-3, IC 14-34-2-2, and 312 IAC 3-1. A Commission administrative law judge serves as the ultimate authority for the Board of Licensure for Professional Geologists and the Board of Registration for Soil Scientists. The Commission also adopts permanent rules that apply to responsibilities and functions of the DNR. IC 14-10-2-4 and IC 14-10-2-7.

By resolution on January 25, 1990, the Commission established its Division of Hearings. As required by statute, the resolution was approved by the Governor on April 27 and became effective on July 1, 1990. The resolution provided in part:

The division of hearings is established, under the natural resources commission, to be coordinated by the chief administrative law judge: (1) to conduct hearings and proceedings relative to [AOPA], the rule adoption act, the conservancy district act, and as otherwise specified by the commission; and (2) to provide assistance to the commission and the other boards of the department in seeking to conform with the legal requirements for the conduct of their meetings.

P.L. 28-1990 originally provided that hearing processes under AOPA and for permanent agency rules were the responsibility of the Commission and its "division of hearings". IC 14-3-3 repealed. Following recodification, the Division of Hearings and its administrative law judges are governed by IC 14-10-2-2.

The offices of the Division of Hearings are located at Indiana Government Center North, 100 North Senate Avenue, Room N501, Indianapolis, Indiana 46204-2200. The telephone number is (317) 232-4699.

INDEXING OF FINAL ADJUDICATIVE AGENCY DECISIONS

AOPA provides in IC 4-21.5-3-32 that an agency shall index and make available all written final orders for public inspection and copying. In addition to providing better communications to the regulated public, this provision acknowledges an agency may utilize ~~some~~ an indexed orders as precedent.

The Division of Hearings maintains a database on the Commission's website called "CADDNAR". Accessible through CADDNAR are **Commission** decisions rendered by the Commission **issued** following the completion of a contested proceeding, **including** ~~Included~~

are those **resulting from** following (1) hearing; (2) summary judgment; or, (3) involuntary dismissal, if a noteworthy point of law is considered.

~~Upon request of the parties, agreed orders may be included if they address novel legal issues.~~ CADDNAR includes all Commission decisions since 1978 when the agency began regularly assigning proceedings to administrative law judges. Histories are provided for decisions taken on judicial review to a circuit or superior court or on appeal. CADDNAR is searchable <http://www.in.gov/nrc/2369.htm>.

In a resolution approved on November 22, 1988, the Commission adopted CADDNAR as the agency index under IC 4-21.5-3-32 for **agency actions and**. ~~The Commission also specified that Commission decisions in CADDNAR may be used as precedent relied upon in~~ for a proceeding under AOPA.

Use of CADDNAR was first acknowledged by the Indiana Court of Appeals in *Peabody Coal v. Indiana DNR*, (1994 Ind. App.), 692 N.E.2d 925. Subsequent reported decisions have also acknowledged CADDNAR.

INDEXING OF FINAL ORDERS ADOPTING PARTIES' AGREEMENTS AND SETTLEMENTS

The Division of Hearings also maintains ~~an index~~ a database of **Commission final AOPA agreed orders adopting parties' agreed orders or other filings memorializing the terms of a settlement. These types of final orders bind the parties to a specific administrative resolution. These types of final orders cannot be relied upon as precedent in other administrative matters.** These are organized alphabetically on recordable discs and are available for viewing and copying.

Upon the agreement of the parties, the Commission may direct terms of an agreed order or other filing memorializing a settlement to be included in CADDNAR if, in the Commission's opinion, it addresses a novel legal issue in a manner appropriate for general reliance.

TRANSCRIPT FEES

Under AOPA, **"the administrative law judge shall have the hearing recorded at the agency's expense. The agency is not required, at its expense, to prepare a transcript, unless required to do so by law."** IC 4-21.5-3-25(g). AOPA also provides that the party that initiates judicial review of a final agency order is generally responsible for the costs of transcript preparation. As provided in IC 4-21.5-5-13(d), the agency "shall charge" the person seeking judicial review "with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court." The statutory subsection also clarifies that preparation costs include more than copying expenses.

The Commission adopted 312 IAC 3 to assist in its implementation of AOPA. 312 IAC 3-1-14 governs court reporters and transcripts. Subsection (c) provides, in part, that the "party who requests a transcript. . . shall pay the cost of the transcript: (1) as billed by the court reporting

service; or (2) if the transcript is prepared by an employee of the [C]ommission, as determined from time to time by the [C]ommission on a per page basis after consideration of all expenses incurred in the preparation of the transcript." At its March 24, 1998 meeting, the Commission set the fee for a transcript prepared by an employee of the Commission "at \$3.80 per page."

The Commission, in its sole discretion, will determine periodically whether its Division of Hearings is available to prepare a transcript. Notwithstanding the establishment of a transcription fee, the Commission, at its January 20, 2015 meeting, determined that its Division of Hearings is not available to prepare transcripts.

With respect to a transcript prepared by a court reporting service, the party requesting preparation of the transcript shall provide the Commission's Division of Hearings with the name, address, telephone number and contact person for the party's chosen court reporting service. The Commission will provide an audio recording directly to the court reporting service for transcription at the requesting party's expense.

Administrative hearings before the Commission are recorded as required by IC 4-21.5-3-25 and 312 IAC 3-1-14 and the audio recording is an agency record under 312 IAC 3-1-17(a). To ensure the integrity of the agency record, the completed transcript must be returned directly to the Commission's Division of Hearings for review and approval as to accuracy. The Commission reserves the right to require corrections of the transcript. Following completion of the accuracy review and the making of necessary corrections to the satisfaction of the Commission's Division of Hearings, the transcript will be forwarded to the requesting party.

The Commission shall not certify any transcript prepared by a court reporting service as an official record of the proceeding unless it is reviewed and deemed to be accurately transcribed by the Commission's Division of Hearings. The Division of Hearings shall not certify a transcript as an official record of the proceeding unless the transcript includes a certification of preparation and accuracy by a court reporting service. An original transcript must be maintained as a part of the official record of the proceeding.

HISTORY

Information Bulletin #1 was first published at 13 Ind. Register 1938 on July 1, 1990. The First Amendment noted the per-page employee transcript fee was increased from \$1.60 to \$3.80. An address change for the Division of Hearings was noted from the Indiana Government Center North to the Indiana Government Center South. 26 Ind. Register 1375 (January 1, 2003). The Second Amendment was part of a process to review all Commission nonrule policy documents, with a view to potential sunseting, and included mostly technical changes. 20061011-IR-312060438NRC (October 11, 2006). The third amendment was approved on March 20, 2012. The URL for CADDNAR was updated. The return of the Division of Hearings offices to the Indiana Government Center North was noted. A new reference was made to the database of AOPA agreed orders, and the limited circumstance in which agreed orders may be included in CADDNAR was clarified. Other technical changes were also made. **The fourth amendment was approved on (insert date). Clarifying amendments were made with respect to the indexing of adjudicated agency decisions and the indexing of agreed orders. Processes for obtaining transcripts of adjudicatory proceedings were also updated.**